

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

NOV 12 2010

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY Whe DEPUTY

ROBERT WHEELAND,

Plaintiff,

vs.

LAWTON CORRECTIONAL FACILITY,

Defendant.

No. CIV-10-973-W

ORDER

On October 8, 2010, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this matter and recommended that this action be dismissed without prejudice to refiling. Plaintiff Robert Wheeland was advised of his right to object to the Report and Recommendation, but he has filed no objections within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Robert's suggested disposition of this matter. On September 9, 2010, Magistrate Judge Roberts granted Wheeland permission to proceed without prepayment of the filing fee of \$350.00, but directed him to pay an initial partial filing fee of \$4.05, which represented twenty percent (20%) of the greater of (1) the average monthly deposits, or (2) the average monthly balance in his prison accounts for the six-month period immediately preceding the filing of his complaint. See Doc. 5 (citing 28 U.S.C. § 1915(b)). Wheeland was further advised that if he failed to pay the initial partial filing fee or failed to show cause in writing for his failure to pay, this action was subject to dismissal without prejudice. E.g., id.

The record shows that Wheeland has neither paid the initial partial filing fee nor shown cause for his failure to pay by the date designated by Magistrate Judge Roberts. Accordingly, the Court, in the absence of any objection by Wheeland,

(1) ADOPTS the Report and Recommendation [Doc. 6] issued on October 8, 2010;
and

(2) DISMISSES this matter without prejudice to refiling.

ENTERED this 12th day of November, 2010.


LEE R. WEST
UNITED STATES DISTRICT JUDGE